Supreme Court, U.S.
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In The

Supreme Court of the United States

C. D.,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

On Petition For A Writ Of Certiorari
To The Superior Court
Appellate Division Of New Jersey

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Supreme Court should declare New Jersey's Megan's Law registration and notice requirements as applied to juveniles under 14 unconstitutional under the substantive component of the Federal Constitution's Fourteenth Amendment's Due Process Clause.

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OPINIONS BELOW

The Order of the New Jersey Supreme Court denying Petitioners Petition for Certification is reprinted at App. 9. The order and opinion of the New Jersey Superior Court Appellate Division is unpublished and reprinted at App. 1.

STATEMENT OF JURISDICTION

The New Jersey Supreme Court entered its order denying C.D.'s Petition for Certification on February 3, 2010 (App. 9) and this court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process clause of the Fourteenth Amendment of the United State's Constitution. The State provisions in question are Megan's law, *N. J. S. A.* 2C:7-1 to -19.

STATEMENT OF THE CASE

THE FACTS

C.D., a 12 year old boy pled guilty in Juvenile Court to a third degree endangering involving touching with his penis the vagina of a five year old

sister and fourth degree lewdness (for doing so in front of his two year old sister). (App. 1, sealed disposition sheets, 002 to 004.)[1] The Plea reserved his rights to challenge the application of Megan's law. He raised the question presented herein in the Appellate Division of the Superior Court. In a *per curiam* opinion, the Appellate Division reviewed verbatim much of the expert testimony of a Psychiatrist who described, "based on a reasonable degree of medical certainty" (App. 6) the risk of harm to C. D. and his family of the application of New Jersey's Megan's law. The harm included the stigmatization, labeling and reinforcement of C. D. as a sex offender (App. 4); the significant negative impact this would have on his ability to have interpersonal relationships with his peers, his teachers, his ability to apply for a job in his adolescent years, to go on healthy dating relationships and apply for college (App. 3). The Doctor also opined that it would likely push C.D. into depression given an already existent tendency towards depression and his diagnosis of a possible dysthemic disorder and given his passive thoughts that he wishes he was dead, the doctor was concerned that he may have some proclivity to potential suicidality and expose him to depressive and suicidal episodes by the sex offender label. (App. 4) He also opined that it

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[1] Three dispositions sheets (numbered 002 to 004, there is no 001) signed by the trial judge were submitted under cover letter and seal to protect C. D.'s identity. Nothing in the appendix was impounded by the court.

certainly would interfere with his development of normal sexuality and dating. (App. 4) It would also effect the family as a whole in effect ostracizing the other children (including the victims) of this law abiding church going family. (App. 4-5) In turn this would further damage C. D. as he would be expected to carry the burden for this rejection of his family by his community (App. 5).[2] The Court 's opinion then states:

> On this appeal C. D. argues
>
> Point 1: NEW JERSEY'S MEGAN'S LAW SYSTEM IS UNCONSTITUTIONAL AS APPLIED TO JUVENILES BECAUSE IT VIOLATES THE SUBSTANTIVE CLAUSE OF THE FEDERAL CONSTITUTION BY IMPOSING ON JUVENILES WIDE SCALE STATE IMPOSED STIGMATIZATIONS
>
> We agree with Judge Farber that this case even with the endeavor to make an "as applied" argument is controlled by In Re Registrant J. G. 169 N. J. 304, 336-40 (2001) acknowledges that C. D. appeals. See also Doe v. Poritz, 142 N. J. 1,74 (1995) R. 2:11-3(e)(2).

Appellate Division Opinion. App. 7

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[2] All of the negative effects clearly take place during his adolescent years from 12 to 18 and continue thereafter even if he is relieved from registration at age 18.

New Jersey's position on the issue of Substantive rights is clear: "We Deal here not with the question of substantive constitutional deprivation for we have held that there is none." *Doe v. Poritz*, 142 N. J. 1, 90 (1995). New Jersey also makes no distinction between adults and Juveniles of any age except for allowing Juveniles under 14 to have the opportunity to get out from under Megan's law registration when they turn 18 provided they can show they are not a danger to the public by "clear and convincing evidence." *In Re Registrant J.G.*, 169 N. J. 304, 336-40 (2001). This would seem to fly in the face of *In Re Gault*, 387 U.S. 1, 87 S. Ct. 1428 (1966) and its progeny in that Juveniles may be stigmatized for life and subject to tiers I, II and III sans jury trial and with only[3] a chance to show by clear convincing evidence that he will not be a risk to the public when he turns 18. By the time he is 18 C. D. shall have been exposed to wide stigmatism for 6 years and still may have it for the rest of his life. And this occurs even though the New Jersey Supreme Court

> regard[ed] as implausible and anomalous the notion that a child 'sex offender' such as J.G. should pursuant to Megan's Law be subject to a lifetime registration requirement merely on the basis of a delinquency adjudication

---

[3] Partial only because notification, ostracizing, dating, adolescent jobs, school, peer relations, guilt, reinforcement of C. D. as sex offender, all take place from age 12 to 18 and thus much of the damage is likely done by that time.

> that included no effort to assess his true culpability.

In Re Registrant J. G., supra at 336

EXTENT OF THE NOTIFICATION

It is worth reviewing the extent of the various notifications. Tier I, II, and III involve notice of varying degrees. In his dissent, Justice Stern recites accurately the scheme set up and the kinds of Notification:

> The Court construes the statutory scheme to mandate notification for "all those required to register." . . .
>
> The Community Notification Law provides the Attorney General, after consultation with an advisory council established pursuant to N.J.S.A. 2C:7-11, with broad powers to adopt guidelines and procedures to effectuate the notification requirements. The law requires the Attorney General to adopt guidelines that provide for three levels of notification (referred to as tiers in the Attorney General's Guidelines) depending on the risk of re-offense: (1) If risk of re-offense is low, law enforcement agencies likely to encounter the person registered shall be notified; (2) If risk of re-offense is moderate,[4] organizations in

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[4] C. D., per the Expert opinion of the psychiatrist, is likely to be classified as a tier II given the two victims. To date he has not been tiered. This is not unusual and sometimes persons are

(Continued on following page)

the community including schools, religious and youth organizations shall be notified in accordance with the Attorney General's guidelines, in addition to the notice required by paragraph (1) of this subsection; (3) If risk of re-offense is high, the public shall be notified through means in accordance with the Attorney General's guidelines designed to reach members of [*117] the public likely to encounter the person registered, in addition to the notice required by paragraphs (1) and (2) of this subsection.

[N.J.S.A. 2C:7-8c.] All offenders, no matter how low the risk of re-offense, are subject to at least Tier One notification.

The law provides [***208] a nonexclusive list of factors that must be considered in assessing the risk of re-offense:

(1) Conditions of release that minimize risk of re-offense, including but not limited to whether the offender is under supervision of probation or parole; receiving counseling, therapy or treatment; or residing in a home situation that provides guidance and supervision;

(2) Physical conditions that minimize risk of re-offense, including but not limited to advanced age or debilitating illness;

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not tiered until years have gone by for various reasons. They also may be re-tiered if they move to a new location.

(3) Criminal history factors indicative of high risk of re-offense, including: (a) Whether the offender's conduct was found to be characterized by repetitive and compulsive behavior; (b) Whether the offender served the maximum term; (c) Whether the offender committed the sex offense against a child.

(4) Other criminal history factors to be considered in determining risk, including: (a) The relationship between the offender and the victim; (b) Whether the offense involved the use of a weapon, violence, or infliction of serious bodily injury; (c) The number, date and nature of prior offenses;

(5) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(6) The offender's [***209] response to treatment;

(7) Recent behavior, including behavior while confined or while under supervision in the community as well as behavior in the community following service of sentence; and

(8) Recent threats against persons or expressions of intent to commit additional crimes. [N.J.S.A. 2C:7-8b.]

Pursuant to statutory authority, the Attorney General has added other factors to assess the risk of re-offense. As the majority points out, "[t]he Guidelines' list of factors, however, fails to include several required by statute," ante at 24 n.5, 662 A.2d 379 n.5, including the inquiry into the offender's "behavior in

the community following service of sentence," N.J.S.A. 2C:7-8b(7), which could point to a higher or lower risk assessment. Moreover, the Guidelines use the statutory factor that inquires [*118] "[w]hether psychological or psychiatric profiles indicate a risk of recidivism," N.J.S.A. 2C:7-8b(5), in a nonneutral manner; that is, that criterion is used to determine whether Tier Two or Tier Three is appropriate, but not whether Tier One notification should apply. However, the Court notes that the Guideline's inconsistencies with the Community Notification [***210] Law "are simply the product of the extreme time pressures imposed by the laws[ ] [and] should be appropriately revised in accordance with [the Court's] opinion." Ante at 24 n.5, 662 A.2d at 379 n.5.

Although the Community Notification Law authorized county prosecutors and law-enforcement officials to assess the risk of re-offense, N.J.S.A. 2C:7-8d(1), and therefore the level or tier of notification that applied, the Court concludes that judicial review of that determination through a summary proceeding is required prior to Tier Two or Tier Three notification. See ante at 29-37, 662 A.2d at 382-85.

With respect to Tier Two and Tier Three notification, the Court restricts the scope of notification provided under both the statute and the Guidelines. Although the statutory provision authorizing Tier Two notification contains no such language, the Court limits

notification to organizations in the community [**427] that are "likely to encounter" the offender, a restriction present in the statutory authorization of both Tier One and Tier Three. See ante at 35, 662 A.2d at 384. The Court interprets "likely to encounter" to mean neither "'possibly'" [***211] nor "'probably'" but rather "'having a fair chance to encounter,'" ante at 36, 662 A.2d at 385, and reasons that "[t]he factor that will ordinarily be critical to a determination of 'likely to encounter' is geography – how close is the institution or organization, in the case of Tier Two notification, to the offender's residence or place of work or school." Id. at 37, 662 A.2d at 385. Moreover, consistent with the Attorney General's interpretation, the Court further restricts Tier Two notification "to those organizations that actually are in charge of the care or supervision of children or women." Ante at 29, 662 A.2d at 382.

[*119] Under the Guidelines, organizations receiving Tier Two notification are provided a notification form containing the following information: the offender's name, address, place of employment and/or schooling, a recent photograph, physical description, the offense for which he or she was convicted, and a description of the vehicle he or she uses and its license-plate number. The Court requires that those organizations receive a notice that "shall specifically direct them not to notify anyone else." Ante at 35, 662 A.2d at 384. [***212]

> Addressing Tier Three notification, the Court determines that the Guidelines exceed the notification authorized by the statute. The Court concludes that the Guideline's notification method consisting of "community meetings, speeches in schools and religious congregations" is not sufficiently a "means * * * designed to reach members of the public likely to encounter the person registered." N.J.S.A. 2C:7-8c(3). Notification could, however, be provided "to a group carefully selected to include only those 'likely to encounter' the offender." Ante at 35, 662 A.2d at 385. The Court determines that Tier Three notification "includes the immediate neighborhood of the offender's residence and not just the people next door[,] * * * all schools within the municipality, depending on its size, * * * [and] schools and other institutions in adjacent municipalities depending upon their distance from the offender's residence, place of work, or school." Ante at 36, 662 A.2d at 385.
>
> Under the Guidelines, the information conveyed to the public through Tier Three notification is the same as Tier Two. The Guidelines, moreover, stress the need [***213] to warn against vigilante activity and to advise the public that allegations of criminal conduct perpetrated against the offender will be carefully investigated and, where appropriate, criminally prosecuted.

Doe v. Poritz, 142 N.J. 1, 116-119 (N.J. 1995) (dissenting opinion of Justice Stern)

This case argues that juveniles under 14 have a Federal constitutional right not to be so widely stigmatized by their own Government. As applied to Juveniles under the age of 14, it is a novel question in this court because the United State's Supreme Court has never been asked to undertake a review of Megan's Law or its progeny under the umbrella of substantive due process or to determine that a juvenile under the age of 14 has a right not to be stigmatized for life by his own government.

THE FUNDAMENTAL RIGHT

This Court has had the opportunity to consider the constitutionality of Megan's Law progeny on procedural due process grounds, but it has not considered whether the inflexible registration requirement violates the substantive clause of the Fourteenth Amendment. *See Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003); *Smith v. Doe*, 538 U.S. 84 (2003). And it has not considered that in the case of juveniles under or over the age of 14.

In *Conn. Dep't of Pub. Safety*, although the Supreme Court denied the defendant's claim that Connecticut's Megan's Law statute violated procedural due process, the Court explicitly left open a challenge on substantive due process grounds:

> Such claims "must ultimately be analyzed" in terms of substantive, not procedural, due process. Because the question is not properly before us, we express no opinion as to

> whether Connecticut's Megan's Law violates principles of substantive due process.

Conn. Dep't of Pub. Safety, *supra*, 538 U.S. at 8 (2003) (citations omitted).

One Author opines

> As Justice Scalia has noted, a challenge to substantive due process will require its proponent to establish that Megan's Law implicates a fundamental right. Similarly, as noted by Justice Souter, not only does the possibility exist that Megan's Law will be challenged on a substantive due process ground, but it is also clear that an equal protection argument may be on the horizon.

Maureen S. Hopbell, *Balancing the Protection of Children Against the Protection of Constitutional Rights: The Past, Present and Future of Megan's Law*, 42 Duq. L. Rev. 331, 352 (2004) (footnotes eliminated).

Does the wide scale stigmatization of Megan's Law implicate a fundamental right? This is not an easy question in any case. In *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678 (1965), the majority found a right of privacy protected married persons from intrusion into the bedroom. "The First Amendment has a penumbra where privacy is protected from governmental intrusion." Ibid. at 483. The Court spoke of the right to educate one's children and its relationship to the first amendment. Here we have the right to discipline and raise and correct the morality of one's children without the knowledge of the community. When combined with the fact that

children's privacy has been protected by the courts for well over a 100 years, C. D would argue that he has a fundamental right not to be so widely stigmatized by the same court that has exercised the rights of *Parens Patria* over him. This right has been amply demonstrated in a brilliant article by Andrew J. Hughes.

The right of juveniles to be free from wide-scale, state-imposed stigmatizations is fundamental; it is deeply rooted in the history and traditions of the nation and implicit in the concept of ordered liberty. This is evidenced by the fact that all fifty states have separate juvenile codes that seek to protect the confidentiality of juvenile proceedings. It is C. D.'s contention that the due process clause protects certain 'fundamental liberty interests' from deprivation by the government . . . unless the infringement is narrowly tailored to serve a compelling state interest. Only fundamental rights and liberties which are 'deeply rooted in this Nation's history and tradition' . . . qualify for such protection.") (citations omitted); *Michael H. v. Gerald D.*, 491 U.S. 110, 122 (1989) ("Due Process Clause affords only those protections 'so rooted in the traditions and conscience of our people as to be ranked as fundamental.") (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934)).

> The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They

believed that society's role was not to ascertain whether the child was "guilty" or "innocent," but "What is he. How has he become what he is, and what had best be done in his interest and the interest of the state to save him from a downward career." The child – essentially good, as they saw it – was made "to feel that he is the object of (the state's) care and solicitude," not that he was under arrest or on trial. The rules of criminal procedure were altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalism, were to be "clinical" rather than punitive.

Jeffrey A. Butts, Ph.D., a senior research associate at the Program of Law and Behavior, Urban Institute, in the District of Columbia, explained that confidentiality has been "an integral part of the traditional juvenile justice model, based upon the theory that publicly designating a juvenile as a law violator would stigmatize a young person. This stigma would then encourage the juvenile to adopt a deviant self-image and reduce the potential for rehabilitation." [*435] States have long recognized that imposing stigmas upon juveniles runs contrary to the rehabilitative goals of the juvenile justice system and could cause juveniles to commit

> additional anti-social acts. The right of juveniles to be free from wide-scale state-imposed stigmatizations must be classified as fundamental for substantive due process purposes. Therefore, the legislation will be subject to strict judicial scrutiny and struck down unless it is narrowly tailored to serve a compelling government interest.

Andrew J. Hughes, *Current Issues in Public Policy: Haste Makes Waste: A Call to Revamp New Jersey's Megan's Law Legislation As Applied to Juveniles*, 5 Rutgers J. L. & Pub. Pol'y 408, 434-435 (2008) (footnotes omitted).

FAILURE TO NARROWLY TAILOR

It should be noted by this court that Megan's law is not a sentence nor a function of the juvenile law but is the result of a separate statute, claiming to protect the public from all sex offenders. If this court accepts as true a juvenile right to be free of such stigmatizations by his government then the only question is whether it is narrowly tailored to serve a compelling state interest. There was no attempt by the legislators to tailor in any way the notice provisions for juveniles. Moreover the basis upon which juveniles are brought under the umbrella of this stigmatizing statute was based on the false premise that juvenile recidivism rates were the same as adult rates. This is clearly false. *See* Andrew J. Hughes, *Current Issues in Public Policy: Haste Makes Waste: A Call to Revamp New Jersey's Megan's Law*

Legislation As-Applied to Juveniles, 5 Rutgers J. L. & Pub. Pol'y 408 (2008).

REASONS FOR GRANTING THE PETITION

The state of New Jersey has held that there is no violation of substantial due process, even in the case of juveniles under 14. They therefore have concluded that a juvenile has no fundamental right not to be stigmatized by his own government. This advocate contends that there is such a right. In this case perhaps the right may be said to originate in the family and the parents' traditional right to raise and correct their children as well as the historic confidential treatment of juveniles. Court's like New Jersey cannot assume the role of *Parens Patria* and then simply find it anomalous that such a minor can be so stigmatized when it recognizes that no real effort to assess culpability is undertaken.

This advocate can find no case decision in which one state has held that substantive due process has been violated and no federal courts conflict on this issue. However, some state have protected their children by excluding them from a Megan's law application, namely, Alabama and New Mexico. *See* ALA. CODE §§ 13A-11-200 to -203 (2006) ("If any person, *except a delinquent child* . . . residing in Alabama, has been convicted, or shall be convicted in any state or municipal court in Alabama, or federal court . . . shall, upon his or her release from legal custody, register with the sheriff of the county . . . "

(emphasis added)); N.M. STAT. ANN. § 29-11A-3(D)(1) (West 2007) (definition of "sex offender" limited to one that is "convicted" of committing a sex offense).

Part of the motivation to even have a sex offender registration is now economic:

> In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registry Act, which required all states to implement some form of sex offender registry. Under the statute, any state that failed to implement an adequate program would not receive ten percent of the funds that it would have received under the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3765).
>
> Although all states are now required to maintain a registry, their treatment of juveniles widely varies. Many states explicitly impose some form of registration requirements upon juvenile offenders, but these states differ in their application. Other states do not expressly include or exclude juveniles, and leave considerable room for judicial interpretation. Two states have explicitly moved juveniles outside of their statutory scheme.

Andrew J. Hughes, *Current Issues in Public Policy: Haste Makes Waste: A Call to Revamp New Jersey's Megan's Law Legislation As-Applied to Juveniles*, 5 Rutgers J. L. & Pub. Pol'y 408, 443-444 (2008).

Thus while the more traditional reasons of conflict between State or federal decisions which trigger the granting of a writ of certiorari is absent, the disparity of treatment across this land is considerable and whether or not C. D. as well as juveniles throughout this land have a federal constitutional right is an important question which should be decided by this court. Its importance now and in the future to our children and to our families, especially when the sex offense is with regard to sibling sexual contact cannot be doubted. C. D. contends the New Jersey Court rulings fly in the face of fundamental constitutional rights and duties assumed long ago by our states, namely the role of *Parens Patria* as well as the juvenile and the family's right to privacy and the right of a juvenile under 14, who historically is presumed not to have the requisite mental capacity to commit a crime, not to have his state so widely stigmatize him, so invade his privacy and the right of his family to bring him and his siblings up without such a breach of confidentiality. These amount to fundamental rights. New Jersey has abandoned its role as *Parens Patria*, and surely that role assumed by most states deserves a review by this Court.

CONCLUSION

The court should grant the writ and declare that New Jersey has violated C. D. substantive rights under the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

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SUPERIOR COURT
OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5925-07T4

STATE OF NEW JERSEY
IN THE INTEREST OF C.D.

Submitted: September 23, 2009 – Decided: October 16, 2009

Before Judges Stern and Sabatino.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Sussex County, Docket No. FJ-19-38-08.

Joseph S. Murphy, attorney for appellant C.D.

David J. Weaver, Sussex County Prosecutor, attorney for respondent State of New Jersey (Jerome P. Neidhardt, Assistant Prosecutor, on the brief).

PER CURIAM

C.D. pled guilty to third degree endangering (involving touching with his penis the vagina of a five year old sister), and fourth degree lewdness (for doing so in front of his two year old sister). Other charges were dismissed.

C.D. was under fourteen when the offenses were committed.[1] In entering the plea, C.D. acknowledged that he would be subject to registration under Megan's Law, *N.J.S.A.* 2C:7-1 to -19. However, the plea agreement permitted C.D. to argue against the application of Megan's Law.

At the dispositional hearing, C.D. presented Dr. Dean DeCrisce, a child and forensic psychiatrist, who testified that "[i]ncest offenders have the lowest level of reoffense rate and risk compared" to other types of sex offenders. Dr. DeCrisce testified about "the impact that Megan's Law could potentially have on [C.D.]," who had been in sex offender treatment as a result of prior acts. According to Dr. DeCrisce:

> My understanding of the purpose of Megan's Law, and I say what my understanding is because that's how I couch how I feel it will affect him, is that the purpose of Megan's Law is to basically notify the community so that they can take proper measures to protect themselves in the face of substantial risk from a sex offender in their community.
>
> And so my understanding is it's to protect people from the risk that can be provided an offender. And I don't feel that [C.D.] represents that type of risk towards the community or that type of – the application of that law, if you will, as appropriate to his

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[1] The complaint charged that the offense occurred on July 11, 2007 when he was twelve years old.

type of offenses or to his specific case. I feel that it could be potentially very harmful to him for a number of reasons.

Q In what way?

A One is that – I mean certainly the Court is quite aware there's quite a bit of stigma associated with sex offending. There is attitudes in the community of what that means that are usually not correct, and that it's likely that he would be pigeon-holed with – or labeled with that type of stigma, which would carry regardless of where the family moved, what school he went to, if he was tiered, and he very well may be tiered as a tier two because of the age of the younger sibling, that that could require schools to be notified, which is where – he's not a 40 year old man and schools are being notified, he's a kid in those schools that would be notified. So that means the school officials would know, summer camps would know, people around him would know.

I understand that there is a reasonable attempt to try to keep that private, but there is the realistic view of what could be done with that, and that in his formative years I believe that would significantly impact on his ability to make interpersonal relationships with his peers, which I already stated was, I believe, one of the problems that he has, and his ability to in his later adolescents, to apply for a job, to go on appropriate healthy dating situations, to apply for

college, that this would interfere with all these things and really label him with the sex offender label, and where he could be, as I stated, rejected by his peers, teachers and maybe family members. So that's one risk.

One is that it reinforces the identification as a sex offender. I'm not sure that that's the best – that that's what should be what is reinforced in a child, as opposed to an adult offender and may – I believe that he has a tendency towards depression and I diagnosed him with a possible dysthemic disorder. And I believe that these things would likely push him into depression. I have understood that he has had passive thoughts of wishing he was dead. He has had thoughts of those. That means, in my belief, he has some proclivity to potential suicidality in the future. And I believe that those types of thoughts come out when people are pushed up against the wall, so to speak.

So that maybe it could potentially predispose him to some depressive and suicidal episodes in the future by really labeling him that way and having his peers reject him. I believe that certainly would interfere with his development of normal sexuality and dating if the community knew. And that's certainly something I would hope would happen for him in the future, that he would be able to develop in that healthy way.

I also believe that it would affect the family as a whole of course, if their community

was to know. I believe that these are community-minded, law-abiding educated members of their church, who probably highly value their value in the community. And if they were seen as kind of harboring a sex offender in some type of soiled way that other kids, even though they're siblings, if they had friends, that they would not be allowed to come over because in some way they could be harmed or they wouldn't want to have anything to do with the [D] Family, I think that that's not only damaging to the family, to the victims, it's also damaging to [C.D.], also, because then he would be expected to be carrying the burden for this rejection from everyone. And I'm not sure that that's entirely appropriate for his offending behavior.

And then finally, I think there's always a risk of vigilantism. And I noted in my report that on the web site there's a big disclaimer there that basically says we are not advocating vigilantism, do not do that, leave the law up to the law, so to speak. So it means that even the New Jersey creators of Megan's Law understood that people could misinterpret this and take vigilantism into their hands.

Q And it's your opinion with respect to these – do you believe that that's within all medical probability that that's likely to occur?

> A Everything that I'm saying here I'm saying with a reasonable degree of medical certainty. I believe it I with a reasonable degree of medical certainty that it's reasonable to assume or not – I should not use that term. It is reasonable to conclude that he will have worsening of depressive symptoms, that he will have a worsening of his ability to make social – appropriate social interactions, that he will likely have some hopelessness and interference with his very possible, very highly probable likelihood that he will go on to college and be a productive member of society.

Despite the testimony, Judge James A. Farber concluded that "Megan's Law is something that I don't feel, based on the facts of this particular case with [C.D.] and the statute as interpreted by our Supreme Court, that I have any wiggle room" and that C.D. must "register and comply with Megan's Law."

On this appeal, C.D. argues:

> *POINT I* NEW JERSEY'S MEGAN'S LAW SYSTEM IS UNCONSTITUTIONAL AS APPLIED TO JUVENILES BECAUSE IT VIOLATES THE [SUBSTANTIVE] CLAUSE OF THE FEDERAL CONSTITUTION BY IMPOSING ON JUVENILES WIDE SCALE, STATE IMPOSED STIGMATIZATIONS.
>
> *POINT II* THE CONSTITUTION OF NEW JERSEY AND THE UNITED STATES [ARE] VIOLATED BECAUSE C.D. IS ENTITLED TO A JURY TRIAL ON ANY ISSUE THAT,

IF FOUND GUILTY OF, WOULD SUBJECT HIM TO THE APPLICATION OF MEGAN'S LAW.

POINT III THE COURT SHOULD FURTHER HARMONIZE MEGAN'S LAW WITH THE JUVENILE SYSTEM BY EXEMPTING UNDER 14 YEAR OLDS FROM REGISTERING.

We agree with Judge Farber that this case, even with the endeavor to make an "as applied" argument, is controlled by *In re Registrant J.G.*, 169 *N.J.* 304, 336-40 (2001). *See also Doe v Poritz*, 142 *N.J.* 1, 74 (1995); *R.* 2:11-3(e)(2).[2]

Registration and community notification can be terminated when a juvenile offender turns age eighteen if the juvenile offender under fourteen, at the time of offense, is not likely to pose a threat. *J.G., supra,* 169 *N.J.* at 336-37. *J.G.* rejected on attack by a juvenile on Megan's Law based on various constitutional grounds, and expressly rejected the need for a jury trial as to tier classification, or otherwise. *Id.* at 338-39. In arguing before the Family Part that there should be no required registration of juvenile offenders under age fourteen until a *J.G.* hearing as

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[2] A juvenile fourteen or older can move his case to the Criminal Division and be tried as an adult in which event, unlike a juvenile under fourteen, he could not seek to be relieved from the requirements of Megan's Law at age eighteen. *See J.G., supra*, 169 *N.J.* at 336-37; *N.J.S.A.* 2A:4A-27-28; *N.J.S.A.* 2C:7-2f; *R.* 5.1-3(b); *R.* 5:22.

to the need for registration at age eighteen is conducted, C.D. recognized he had to convince the Supreme Court to revise *J.G.* His emergent applications for a stay of registration pending appeal was denied by us and a Justice of the Supreme Court. The Justice's order was "without prejudice to movant submitting an application for relief in the appropriate forum following the outcome of the risk assessment hearings." In that connection, we add that Judge Farber noted that the tier classification had not been decided at the time he denied the stay application which he stated could be revisited depending on the classification. At the time the briefs on this appeal were filed, there had been "no official notice of his tier presented to C.D. or his parents." Hence, to this point there is no risk of an internet posting which cannot be retroactively undone if C.D.'s case would otherwise be subject to posting before he might be successful at a *J.G.* hearing. *See N .J.S.A.* 2C:7-2b, 7-8c, 7-13d.

Affirmed.

SUPREME COURT OF
NEW JERSEY
C-605 September Term 2009
065014

STATE IN THE INTEREST OF C.D.	ON PETITION FOR CERTIFICATION
(C.D. – PETITIONER)	(Filed Feb. 3, 2010)

[/s/ Mark Neary
CLERK]

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-005925-07 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 1st day of February, 2010.

/s/ Mark Neary
CLERK OF THE
SUPREME COURT

The foregoing is a true copy
of the original on file in my office.

/s/ Mark Neary
CLERK OF THE SUPREME COURT
OF NEW JERSEY